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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/651,679

08/29/2003

Kiyono Ikenaka

5341-16

9312

27799

7590

06/06/2007

COHEN, PONTANI, LIEBERMAN & PAVANE

551 FIFTH AVENUE

SUITE 1210

NEW YORK, NY 10176

EXAMINER

GOMA, TAWFIK A

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

06/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/651,679

Applicant(s)

IKENAKA ET AL.

Examiner

Tawfik Goma

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 11, 14-44, 51-98 and 100-123 is/are pending in the application.
- 4a) Of the above claim(s) 11, 15-44, 51-98 and 100 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1, 14 and 101-123 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the amendment filed on 3/2/2007.

Election/Restrictions

The applicant has previously elected Species A, Figure 1 related to an optical pickup apparatus without traverse on 7/10/2006. The amendment to the claims has presented claims related to sub-species of the elected species. Applicant must elect a single sub-species.

Claim 1 is generic to the following disclosed patentably distinct sub-species.

Sub-Species 1 drawn to Figs. 5-6;

Sub-Species 2 drawn to Figs. 7-8;

Sub-Species 3 drawn to Figs. 9-10;

Sub-Species 4 drawn to Figs. 11-12;

Sub-Species 5 drawn to Fig. 13;

Sub-Species 6 drawn to Figs. 14-15.

The sub-species are independent or distinct because claims to the different sub-species recite the mutually exclusive characteristics of such sub-species. In addition, these sub-species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed sub-species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

There is an examination and search burden for these patentably distinct sub-species due to their mutually exclusive characteristics. The sub-species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one sub-species would not likely be applicable to another sub-

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species; and/or the sub-species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. **Applicant is advised that the reply to this requirement to be complete must include (i) an election of a sub-species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and(ii) identification of the claims encompassing the elected sub-species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the sub-species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of sub-species requirement, the election shall be treated as an election without traverse.

Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected sub-species.

Should applicant traverse on the ground that the sub-species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the sub-species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the sub-species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Alfred Froebrich on 5/25/2007 to request an oral election to the above restriction requirement, but did not result in an election being made.

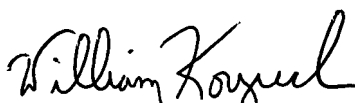
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tawfik Goma whose telephone number is (571) 272-4206. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on (571) 272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

T. Goma
/Tawfik Goma/
5/25/2007


WILLIAM KORZUCH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600